IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

-

WRIT PETITION NO : 18998 of 1994

Between:

Shaik Dada, S/o. Meera Saheb,
Narasaraopeta, Guntur Dist.

..... PETITIONER

AND

1 The District Collector, Guntur.
2 The Commissioner of Civil Supplies, Civil Supplies Bhavan,
Somajiguda , Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Certiorari or any other appropriate writ, order or direction quashing the order of the second respondent dated 5.10.1993 upholding the orders of the first respondent dt.28.8.87 confiscating 25% of petrol seized or its value along with 55 liters of petrol seized separately.

Counsel for the Petitioner: MR.M.V.K.VISWANADHAM
Counsel for the Respondents 1 & 2 .: GP FOR CIVIL SUPPLIES

The Court made the following :

O R D E R :

Petitioner is questioning the order passed by the Commissioner of Civil Supplies dated 5.10.1993 dismissing his appeal and thereby confirming the order of the District Collector, West Godavari District at Eluru, passed in the proceedings dated 28.8.1997 ordering confiscation of 25% of petrol seized or its value in favour of the Government.

Petitioner's case is that he had no knowledge of the acts of driver and cleaner of the vehicle and therefore, he could not have been penalized by the impugned order thereby seizing 25% of the petrol or its value in favour of the Government. Petitioner was transporting petrol under a contract with the petroleum company and a temporary driver was engaged to ply the vehicle. The petitioner had no knowledge of the alleged illegal acts on the part of driver and in terms of the contract between the petitioner and the petroleum company, at the most the petitioner could have been held responsible by the petroleum company for the shortage in petrol, but he could not have been dealt with under the provisions of the Essential Commodities Act or for violation of the provisions of the A.P.Petroleum Products (Licence and Regulation of Supplies) Order, 1980.

The facts, in brief, as noted by the primary authority and the appellate authority are:

> "On receipt of credible information that some oil tanker drivers were tampering with the seals of the oil tankers and were removing and selling petroleum products to unauthorized persons on the national highway no.5, the Vigilance Inspector, V.C.C.S. Dept., West Godavari district, Eluru, along with staff and mediators, who was proceeding towards Bhimadole on 21.4.1987 and at 2.00 AM noticed an oil tanker ADG 7866 parked in front of Ramakrishna & Co., at Gantavarigudem and found 3 persons removing petrol from out of the oil tanker through exit pipe line. On seeing vigilance people, the persons tried to escape, but were apprehended. On enquiry, the persons who claimed to be the

driver and cleaner of the oil tanker ADG 7866, confessed that they were removing petrol for sale to one Sri T.Mandulaiah, who absconded from the spot, who was doing business in petrol by purchasing the same from the oil tankers, passing through the way, and that during the last trip also 50 Ltrs. of petrol was sold to the said person. The C.I. then went into a hut nearby, which was said to be the business premises of the 3rd person and got corroborated the statements of the driver and cleaner and also came to know that Sri T.Madulaiah had taken the hut on rent for keeping the stock. On verification, C.I.found two tins filled with 35 & 20 ltrs. of petrol and other connected equipment to remove petrol from tanker. The C.I. then verified the tanker and found that one of the 4 seals of the tanker were broken and on measurement of petrol in the tanker, he found a shortage of 143 ltrs. of petrol. He also found cans beneath the tanker containing 50 ltrs. of petrol. The C.I. on finding that the driver and cleaner of the tanker were involved in the removal and sale of petrol to an unauthorized dealer, by tampering with the seals of the tanker, seized the tanker with 11,857 ltrs. of petrol and also the two cans filled with 50 ltrs. of petrol, removed from the tanker, and another two cans filled with 55 ltrs. of petrol, which were found in the hut along with other equipment and these facts were recorded. The C.I.measured again the stocks contained in the oil tanker before handing over the same at a petrol bunk at Eluru. A report against the driver, cleaner, owner of oil tanker ADG 7866 and T.Madulaiah was filed by the C.I. in the court of the District Collector, W.G.district u/s.6-A of the E.C.Act,1955 for confiscation of the seized stock."

-

On the afore mentioned allegations, a notice was issued to the others including the petitioner, calling upon them to show cause as to why the stocks of petroleum be not confiscated in favour of the Government for violation of conditions 2 and 3 of form 'F' certificate issued under A.P. Petroleum Products Order, 1980 and also for violation of clause 3 of the said Order. Replies filed were duly considered. On hearing the parties, the primary authority passed an order confiscating 25% of the quantity of petrol. The same was affirmed by the appellate authority.

The petitioner did not dispute that the driver and cleaner were engaged by him and in turn, they also did not deny that the tanker

was carrying less quantity of petrol than what was shown in the accompanying documents. On sighting the vigilance people, they tried to escape. When apprehended, the driver and the cleaner confessed that they were removing the petrol for sale. Some petrol was also found concealed beneath the tanker. On this material, the petitioner cannot be heard to say that for these acts of his employees, he cannot be held vicariously liable. Sale of petroleum product could not have been done by the employees of the petitioner. Any person violating the provisions of the Order will be liable to be penalised or atleast would be liable for penalty. Penalty imposed in this case is confiscation of 25% of the petroleum product or its value. The authorities found that unloading of petrol was done at a point other than the destination or in any case at a place not meant for sale. This act is in violation of the provisions of the Order.

It is not that for such violation, the petitioner's contract was terminated by the company or any other penalty was imposed on him. The imposable penalty is levy of fine. In other words, the fine imposed is to the extent of 25% of the confiscated petroleum product being transported. All persons found indulging or responsible for the unauthorised acts, cannot be heard to complain that though they might be responsible only for the shortfall towards the company whose product was being transported, but would not be liable for violating the provisions of the Order. It is a case where Petroleum Products Control Order admittedly is violated and unauthorized sale by keeping part of petrol for the purpose of unauthorised sale. In such like case, the transporter can not be heard to say that he cannot be penalised since the act is committed by his employees, who admittedly were transporting less petrol than shown in the accompanying documents.

Both the authorities have assigned cogent reasons in support of the impugned orders. They had jurisdiction to pass such orders and with such orders, no interference is called for.

The Writ Petition is, accordingly, dismissed.

15.07.2004

Copy to:

1 The District Collector, Guntur.
2 The Commissioner of Civil Supplies, Civil Supplies Bhavan, Somajiguda , Hyderabad.

3 Two CCs to the G.P. for Civil Supplies, High Court Buildings, High Court of A.P., Hyderabad (o.u.t.).

4 Two CD copies.

PNB/DRK